

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

\_\_\_\_\_  
SEVEN SPRINGS, LLC, X

Plaintiff,

Index No. 9130/06

-against-

THE NATURE CONSERVANCY, REALIS ASSOCIATES,  
THE TOWN OF NORTH CASTLE, ROBERT BURKE,  
TERI BURKE, NOEL B. DONOHOE and JOANN  
DONOHOE,

Defendants. X

**JUDGMENT**

*[Handwritten signature]*  
WESTCHESTER COUNTY CLERK  
08 FEB 15 PM 4:45  
FILED

**WHEREAS**, this action was commenced pursuant to RPAPL Article 15 to compel the determination of claims to real property located in Westchester County, New York; and

**WHEREAS**, Defendants, The Nature Conservancy, The Town of North Castle, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe, filed motions to dismiss the Complaint in this action as asserted against each of them; and

**WHEREAS**, on November 3, 2006, the Westchester County Supreme Court, by the Honorable John L. LaCava, issued an Order (the "Order") which, among other things, granted the Defendants' motions, and

**WHEREAS**, Plaintiff Seven Springs, LLC filed an appeal to the Appellate Division, Second Department, which was subsequently argued on November 5, 2007; and

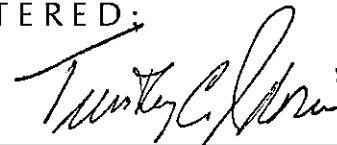
**WHEREAS**, on February 13, 2008, a Decision and Order was issued by the Supreme Court, Appellate Division, Second Judicial Department (a copy of which is

annexed hereto) which provides, among other things, that the Order is reversed, together with costs payable by the respondents.

**NOW, THEREFORE**, upon motion of DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP, Attorneys for Plaintiff, SEVEN SPRINGS, LLC,

**IT IS HEREBY ORDERED AND ADJUDGED**, that the Plaintiff, Seven Springs, LLC, maintaining an office at c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022, shall recover of Defendant, The Nature Conservancy, maintaining offices at 570 Seventh Avenue, New York, New York 10018, Defendant, The Town of North Castle, maintaining offices at 15 Bedford Road, Bedford, New York 10504, Defendants, Robert Burke and Teri Burke, residing at 2 Oregon Hollow Road, Armonk, New York 10504, and Defendants, Noel B. Donohoe and Joann Donohoe, residing at 4 Oregon Hollow Road, Armonk, New York 10504, jointly and severally, the sum of \$5,904.83, representing Plaintiff's costs and disbursements, as taxed, and as set forth in the Bill of Costs attached hereto, and that Seven Springs, LLC have execution therefor.

ENTERED:



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Clerk of the Supreme Court  
County of Westchester

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130/06

-against-

**BILL OF COSTS**

THE NATURE CONSERVANCY, REALIS ASSOCIATES,  
THE TOWN OF NORTH CASTLE, ROBERT BURKE,  
TERI BURKE, NOEL B. DONOHOE and JOANN  
DONOHOE,

Defendants.

COSTS

Appeal to Appellate Division - CPLR Section 8203(a) \$ 250.00

Total Costs \$ 250.00

DISBURSEMENTS

Printing Record on Appeal, Brief and Reply Brief -  
CPLR §8301(a)(6) (See annexed copy of Invoices  
dated 4/23/07 and 7/23/07 from Counsel Press, LLC) \$ 5,654.83

Total Disbursements \$5,654.83

**TOTAL** **\$5,904.83**

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the Courts of this state, affirms that he is a partner in the firm of DeBello Donnellan Weingarten Wise & Wiederkehr, LLP, the attorneys of record for the Plaintiff, Seven Springs, LLC, in the above entitled action; that the foregoing disbursements have been or will necessarily be made or incurred in this action and are reasonable in amount and that copies of documents or papers as charged herein were actually and necessarily obtained for use.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: February 15, 2008  
White Plains, New York

  
BRADLEY D. WANK

<b>Seven Springs, LLC v Nature Conservancy</b>
2008 NY Slip Op 01327
Decided on February 13, 2008
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on February 13, 2008

**SUPREME COURT OF THE STATE OF NEW YORK**  
**APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT**  
ROBERT A. SPOLZINO, J.P.  
MARK C. DILLON  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON, JJ.

2006-11431  
(Index No. 9130/06)

**[\*1]Seven Springs, LLC, appellant**

v

**Nature Conservancy, et al., respondents, et al., defendant.**

DelBello Donnellan Weingarten Wise & Wiederkehr, White Plains, N.Y. (Alfred E. Donnellan, Bradley D. Wank, and Matthew S. Clifford of counsel), for appellant.

Roosevelt & Benowich, LLP, White Plains, N.Y. (Leonard Benowich of counsel), for respondent

Nature Conservancy.

Stephens, Baroni, Reilly & Lewis, LLP, White Plains, N.Y. (Gerald D. Reilly and Kristen L. Holt of counsel), for respondent Town of North Castle.

Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, White Plains,

N.Y. (Lois N. Rosen of counsel), for respondents Robert Burke, Teri Burke, Noel B. Donohoe, and Joanne Donohoe.

## DECISION & ORDER

In an action pursuant to RPAPL article 15 to compel the determination of a claim to real property, the plaintiff appeals from an order of the Supreme Court, Westchester County (La Cava, J.), entered November 3, 2006, which granted the motion of the defendants Nature Conservancy and Town of North Castle and the separate motions of the defendants Robert Burke, Teri Burke, Noel B. Donohoe, and Joann Donohoe to dismiss the complaint insofar as asserted against them pursuant to CPLR 3211.

ORDERED that the order is reversed, on the law, with one bill of costs payable by the respondents appearing separately and filing separate briefs, and the motions to dismiss the complaint insofar as asserted against the respondents are denied.

The plaintiff and The Nature Conservancy (hereinafter the Conservancy) own abutting parcels of land that, prior to 1973, were both owned by the Eugene and Agnes E. Meyer Foundation [\*2](hereinafter the Foundation). The large parcel owned by the Foundation included the land lying under and on either side of Oregon Road. Oregon Road apparently became a town highway at some point in time by virtue of its having been used by the public as a highway for a period of 10 years (*see* Highway Law § 189).

In January 1973 the Foundation conveyed the parcel now owned by the plaintiff, a portion of land lying east and north of Oregon Road, to Yale University. This parcel was subsequently conveyed to the plaintiff in 1995. In May 1973 the Foundation conveyed another portion of its land to the Conservancy. Part of the Conservancy's parcel lies on the west side of Oregon Road directly across that road from the plaintiff's parcel, and part of the Conservancy's parcel lies under and around Oregon Road south of the plaintiff's parcel.

In 1990 the Town Board of the Town of North Castle caused a "Certificate of Discontinuance" to be filed in the town clerk's office purporting to "close" a portion of Oregon Road as it was no longer used for public travel.

The plaintiff commenced this action in 2006, seeking, inter alia, a determination that it has an easement over the portion of Oregon Road referred to in the "Certificate of Discontinuance" and owned in fee by the Conservancy so that it can access a portion of Oregon Road south of the Conservancy parcel that was not closed to the public.

The respondents moved to dismiss the complaint insofar as asserted against them on the grounds, inter alia, that the plaintiff had no implied private easement over the relevant portion of Oregon Road, that any easement was extinguished when the relevant portion of Oregon Road ceased to be a town highway pursuant to Highway Law § 205(1), and that the plaintiff was precluded from challenging Oregon Road's status as an abandoned public highway by the one-year statute of limitations period of Highway Law § 205(2).

Contrary to the respondents' contention, the plaintiff sufficiently stated a cause of action based upon an implied private easement arising in January 1973 when the Foundation conveyed to the plaintiff's predecessor in interest a parcel of land bounded by a road owned by the Foundation and used at the time as a public highway (*see Holloway v Southmayd*, 139 NY 390, 401-407; *see also Glennon v Mayo*, 221 AD2d 504, 505). The abandonment of a public highway pursuant to Highway Law § 205 does not serve to extinguish private easements, as Highway Law § 205 does not provide for compensation to the owners of any private easements that would be extinguished (*see Holloway v Southmayd*, 139 NY at 410; *cf. Barber v Woolf*, 216 NY 7, 14-15; *Municipal Hous. Auth. for City of Yonkers v Harlan*, 24 AD2d 633, 634).

While the respondents submitted evidence that any implied private easement was voluntarily abandoned by the plaintiff or its predecessor (*see Consolidated Rail Corp. v MASP Equip. Corp.*, 67 NY2d 35, 39-40), the respondents failed to conclusively establish this defense as a matter of law for the purposes of a motion to dismiss (*see Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326). Similarly, the respondents failed to conclusively establish that they interfered with the plaintiff's use and enjoyment of the easement for the requisite period of time for the easement to be extinguished by adverse possession (*see Spiegel v Ferraro*, 73 NY2d 622, 625-626; *McGinley v Postel*, 37 AD3d 783, 784).

The respondents' remaining contentions are without merit.

SPOLZINO, J.P., DILLON, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

**COUNSEL PRESS LLC**  
**PO Box 1053**  
**New York, NY 10018-9998**  
**(800) 427-7325**

1 of 1

PQ

**INVOICE**

DelBello Donnellan Weingarten

Wise & Wiederkehr, LLP  
 One North Lexington Avenue  
 White Plains, NY 10601  
 ATTENTION: Bradley D. Wank, Esq.

INVOICE NO.: 7048189  
 INVOICE DATE: 04/23/2007  
 FED.TAX I.D.# 43-2070509  
 FILE NO.: 207639  
 TERMS: Due Upon Receipt

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 COURT: APP DIV 2ND DEP

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**New York, NY 10018-9998**  
**(800) 427-7325**

1 of 1

PQ

**INVOICE****DelBello Donnellan Weingarten**

**Wise & Wiederkehr, LLP**  
**One North Lexington Avenue**  
**White Plains, NY 10601**  
**ATTENTION: Bradley D. Wank, Esq.**

**INVOICE NO.:** 7070954  
**INVOICE DATE:** 07/23/2007  
**FED.TAX I.D.#** 43-2070509  
**FILE NO. :** 209451  
**TERMS :** Due Upon Receipt

**CASE NAME:** 7 Springs v Nature Conservancy**COURT:** APP DIV 2ND DEP

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For Reproduction of :	
Reply Brief - (20 copies, 49 pages)	
Preparation of Brief	\$475.00
1 Filing & 3 Services	\$130.00
Federal Express - To Client	\$20.00
Postage	\$21.75

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**PO Box 1053**  
**New York, NY 10018-9998**  
**(800) 427-7325**

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### INVOICE

DelBello Donnellan Weingarten

Wise & Wiederkehr, LLP  
 One North Lexington Avenue  
 White Plains, NY 10601  
 ATTENTION: Bradley D. Wank, Esq.

INVOICE NO.: 7048190  
 INVOICE DATE: 04/23/2007  
 FED.TAX I.D.# 43-2070509  
 FILE NO.: 207639  
 TERMS: Due Upon Receipt

CASE NAME: 7 Springs v Nature Conservancy  
 COURT: APP DIV 2ND DEP

	AMOUNT
For Reproduction of :	
Appellant's Brief - (20 copies, 68 pages)	
Preparation of Brief	\$565.00

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		0.00
APPLICABLE SALES TAX:	\$	44.49
<b>INVOICE TOTAL:</b>	<b>\$</b>	<b>609.49</b>

9130

06

Index No.

Year 20

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

**SEVEN SPRINGS, LLC,**

**Plaintiff,**

**-against-**

**THE NATURE CONSERVANCY, REALIS ASSOCIATES, THE TOWN OF  
NORTH CASTLE, ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE and  
JOANN DONOHOE,**

**Defendants.**

**JUDGMENT WITH BILL OF COSTS**

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
COUNSELLORS AT LAW  
**Plaintiff**

Attorneys for

ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601

(914) 681-0200

*Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.*

Dated: .....

Signature .....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

**PLEASE TAKE NOTICE**

Check Applicable Box

NOTICE OF ENTRY

that the within is a (certified) true copy of a entered in the office of the clerk of the within-named Court on

20

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon. , one of the judges of the within-named Court, at 20 , at M.

Dated:

FILED  
DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
COUNSELLORS AT LAW

Attorneys for

To:

ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

SS:

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

Check Applicable Box

Attorney's Certification

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for . I have read the annexed

Attorney's Verification by Affirmation

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following.

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.

Dated: (Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

SS:

being sworn says: I am

Check Applicable Box

Individual Verification

in the action herein; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Corporate Verification

the of a corporation, one of the parties to the action; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on , 20 (Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

SS:

being sworn says: I am not a party to the action, am over 18 years of

age and reside at

On , 20 , I served a true copy of the annexed in the following manner:

Check Applicable Box

Service by Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service, addressed to the address of the addressee(s) indicated below, which has been designated for service by the addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

Personal Service

by delivering the same personally to the persons at the address indicated below:

Service by Facsimile

by transmitting the same to the attorney by facsimile transmission to the facsimile telephone number designated by the attorney for that purpose. In doing so, I received a signal from the equipment of the attorney served indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service, addressed to the address of the addressee(s) as indicated below, which has been designated for service by the addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

Service by Electronic Means

by transmitting the same to the attorney by electronic means upon the party's written consent. In doing so, I indicated in the subject matter heading that the matter being transmitted electronically is related to a court proceeding:

Overnight Delivery Service

by depositing the same with an overnight delivery service in a wrapper properly addressed, the address having been designated by the addressee(s) for that purpose or, if none is designated, to the last-known address of addressee(s). Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Sworn to before me on , 20

(Print signer's name below signature)